

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of

Policies and Rules Pertaining to  
the Equal Access Obligations of  
Cellular Licensees

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) RM-8012  
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SEP 22 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF CELLULAR INFORMATION SYSTEMS, INC.**

Cellular Information Systems, Inc. ("CIS"), by its attorneys, hereby submits its comments in response to the above-captioned petition for rulemaking (the "Petition") filed by MCI Telecommunications Corporation and requesting the Commission to commence a proceeding to adopt rules extending equal access obligations to cellular radio licensees. CIS demonstrates herein that the public interest would not be served by the imposition of equal access obligations on independent cellular carriers and that there is no need for the Commission to institute a rulemaking proceeding. The Commission should not impose the additional regulatory burdens and excessive costs on its licensees that equal access obligations represent. Moreover, equal access in the cellular environment would not produce benefits for consumers and likely would serve only the interests of a few long distance companies. The Commission should deny the Petition.

**I. Introduction**

CIS is a publicly-held corporation unaffiliated with any other telecommunications company. CIS has been in the cellular business since 1984 and currently owns and operates cellular systems in 21 markets and holds interim

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authorizations in additional three markets. These systems are clustered by region and share certain operational costs among several or all of the systems.

However, CIS's systems are located in smaller MSAs and RSAs. CIS's largest market is the Duluth/Superior, Minnesota/Wisconsin MSA (Market 141) and many of its markets are much smaller. Thus, unlike the Bell Operating Companies or many other landline telephone companies, cellular operators like CIS do not have a large subscriber base over which they may spread their costs.

Equal access would impose extensive costs on CIS and other independent cellular operators without providing meaningful benefits to subscribers. The imposition of equal access obligations would increase costs significantly, both for equipment and regulatory compliance. In addition, the costs not passed on to consumers could be recouped only by scaling back plans for building out systems. Most subscribers would see their monthly rates increase with little or no tangible benefit to them, as the likely beneficiaries of the proposal would be a few large long distance carriers. In these hard economic times for many independent cellular companies, the imposition of equal access obligations would serve only to limit the ability of independent carriers to respond to consumer demand. When, as here, the costs of new regulatory burdens clearly outweigh any benefit, the Commission should find that the public interest is not served. Further, the Commission should not impose these difficult burdens on independent cellular carriers who have no bottleneck control over access to the telephone network.

**II. Equal Access Would Be Unduly Burdensome for Independent Carriers.**

The Petition assumes that equal access could be accomplished relatively easily, with a simple change in the rules. In fact, equal access would be extremely burdensome to independent cellular carriers, both at the outset and on a daily basis. Any potential benefits to consumers would be far outweighed by these burdens. The benefits of equal access to some interexchange carriers are minimal in comparison.

The costs of equal access are significant. Equal access requires changes in the carrier's switching equipment, and is likely to require the carrier to purchase additional service from the local wireline telephone company.<sup>1/</sup> The cellular carrier also would have to go to considerable expense to ballot its customers for their preferred interexchange carriers, implement new procedures for accepting new customers and make special arrangements for dealing with roamer traffic.

Independent cellular carriers also would be faced with the daily costs of assigning new customers to IXC's, changing presubscribed carriers and assuring that roamer traffic is routed to the appropriate IXC's. The relatively high churn rates for cellular service mean that these ongoing costs will be far higher than for landline carriers.

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<sup>1/</sup> These costs are less important to BOCs, which already have implemented equal access for their wireline facilities.

Independent cellular carriers serving smaller markets, often scattered across the country, also would be unable to take advantage of any economies of scale. For instance, CIS has systems in seven distinct areas of the country, ranging from the southeast to the upper midwest. Landline-affiliated carriers, by contrast, often operate in large, contiguous blocks. Thus, CIS would be unable to integrate its equipment or personnel for equal access.<sup>2/</sup> CIS is not alone: there are many smaller-market cellular operators whose operations are equally dispersed.

Moreover, it makes little sense to impose costly new regulations at this time. Cellular is a new kind of service, still maturing and experiencing growing pains. Many carriers are in delicate financial condition, especially given the current state of the economy, and new regulatory burdens would serve only to make it more difficult for them to operate.<sup>3/</sup>

At the same time, there would be few, if any, benefits for consumers from cellular equal access. The price of basic cellular service would increase to cover carriers' new costs and the carriers would have less money to expand and improve their cellular systems. In an equal access regime, billing and

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2/ The landline facilities of independent telephone companies often are similarly dispersed, and the Commission adopted much more liberal equal access requirements for independents than the BOCs, even permitting waivers of equal access where costs outweigh the potential benefits. *MTS/WATS Market Structure (Phase III)*, 100 FCC 2d 860, 875 (1985), *recon. denied*, 59 R.R.2d 1410 (1986).

3/ The additional burdens of equal access also would discourage carriers from providing services that have marginal profitability. For instance, interim operating authority, already a difficult economic proposition in many cases, might become too costly for most current interim licensees.

collection probably would be separated for regular cellular service and long distance calls, an inconvenience for the cellular customer. Few cellular customers would experience reduced long distance bills, since they will pay retail rates to their long distance carriers.<sup>4/</sup> Moreover, roaming would become more complicated, especially if carriers implement equal access in different ways across the country.

The only possible winners under cellular equal access are a few interexchange carriers, whose gains would result from the losses to cellular carriers and the calling public. Of course, these same carriers already can compete for cellular long distance through contracts with cellular carriers. Under equal access they would, instead, just market directly. This small difference would have only a minor effect on competition and does not justify the heavy burdens of equal access on cellular carriers and consumers.

**III. Cellular Market Conditions Are Much Different from the Landline Market Conditions That Justified Equal Access.**

Equal access was adopted for landline carriers because of the specific conditions of the landline telephone market. Those conditions simply are not present in the cellular markets, especially for independent cellular carriers. Most notably, cellular carriers lack the bottleneck monopoly that landline carriers have. Because cellular service does not implicate the same issues, the reasoning that justified landline equal access is inapplicable to cellular carriers.

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<sup>4/</sup> In fact, many customers might actually have increased long distance costs if cellular carriers use access charges to recover the costs of equal access.

It is axiomatic that the local exchange carrier provides the only route to every telephone customer in the United States. If the local carrier denies access to an interexchange carrier, the telephone customer cannot obtain basic telephone service from the interexchange carrier. Thus, landline equal access provides a way to pass through the bottleneck to receive basic interexchange service.

Cellular service, on the other hand, is a competitive service that has no bottleneck control over access to the local exchange. Even after a decade of rapid growth, the reach of cellular service in no way compares to that of landline telephone service. Cellular carriers, as the Commission determined at the outset of the cellular service, are non-dominant. Consumers who wish to have cellular service always have a choice of cellular carriers and nobody needs to buy cellular service in order to have access to the basic telephone network. Thus, cellular is quite different from landline service and simply does not have the characteristics of landline carriage that led to the adoption of equal access.

In addition, the Commission has found that even some bottleneck landline carriers should be exempted from equal access under some circumstances. When the characteristics of a particular carrier's operations make equal access unreasonably difficult, the Commission can grant waivers of its equal access requirements. *See Note 2, supra.* Independent cellular carriers, which often face even more diffuse markets than independent landline companies, are similarly situated. The subscribership in many smaller cellular markets is measured in the hundreds, rather than in the millions or hundreds of thousands.

When this fact is coupled with the non-dominant, optional status of cellular, it is evident that the conditions that supported landline equal access are inapplicable to independent cellular carriers.

These facts make it impossible to justify requiring independent cellular carriers to provide equal access. Independent cellular carriers, those with no affiliation with landline telephone companies, lack the ubiquity of service and the market power that made the Commission and the MFJ court conclude that equal access was appropriate for landline telephone service.<sup>5/</sup> CIS submits that there is no reason to believe that a policy intended to address issues raised by a bottleneck monopoly of an essential service has any validity for a competitive, optional service provided by a carrier with no connection to the landline monopoly.

#### **IV. Conclusion**

The Commission should deny the Petition and close this proceeding. Equal access would impose extensive costs on CIS and other independent cellular operators without providing meaningful benefits to subscribers. It is difficult to justify imposing those increased costs on a young, growing industry in a time of economic difficulty, especially when the benefits are marginal at best. Moreover, the reasoning that supports landline equal access does not apply to a competitive, optional service like cellular. For these reasons, Cellular Information Systems,

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<sup>5/</sup> While MCI asserts that cellular could substitute for landline service, Petition at 4, the number of subscribers who use cellular telephones in that way is exceedingly small.

Inc. respectfully submits that the Commission should deny the Petition for Rulemaking of MCI Telecommunications Corporation and close this matter without any further proceedings.

Respectfully submitted,

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September 2, 1992

CERTIFICATE OF SERVICE

I, Justine N. Menapace, hereby certify that today on this 2nd day of September, 1992, I caused a copy of the COMMENTS OF CELLULAR INFORMATION SYSTEMS, INC. to be served by first-class mail, postage prepaid, or hand delivery to the following:

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